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# SECTION 2

## PROSECUTION OF CIVIL OFFENSES

Affirmative Civil Enforcement  
Debt Collection  
Asset Forfeiture  
Defensive Litigation  
Bankruptcy  
Defense of Federal Programs  
America's Environment

### LEGAL REPRESENTATION, ENFORCEMENT OF FEDERAL LAW AND DEFENSE OF U. S. INTERESTS

Assistant U.S. Attorneys represent the interests of the United States throughout the district in matters for which the Department of Justice has jurisdiction. This representation includes post trial litigation before the Fifth Circuit Court of Appeals and the U.S. Court of Claims.

The district's strategies within this mission are to:

- ☐ Recover money owed to the federal government as the result of fraud, loan and contract defaults, and unsatisfied judgments and combat health care fraud through the vigorous implementation of civil remedies provided by the False Claims Act.
- ☐ Protect the U. S. Treasury against unwarranted monetary claims, assure appropriate payments for meritorious claims, maximize monetary recovery for injury and damages to federal property, and assert the federal government's interest in defensive litigation.
- ☐ Ensure the government's interests are fully protected in bankruptcy proceedings.
- ☐ Defend against challenges to federal programs, policy initiatives and statutes, and enforce remedies for violations of statutory-based federal program requirements.

## AFFIRMATIVE CIVIL ENFORCEMENT

The district's Affirmative Civil Enforcement Program (ACE) was active in the past year in meeting the first strategy of recovering money to the government. AUSA Michele Zingaro led an effort which obtained a judgment of nearly \$1.5 million against Dr. William Harold Mack, a Houston pediatrician charged with defrauding the Medicaid program.

### Pediatrician overbilled Medicaid, judge rules

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le  
pediatrician involved in y development overbilled anded program by more i federal judge has ruled.  
arold Mack, 65, who oper- dinics that screened poor tted billing statements for sts and even billed Medic- tlian Health and Medical 'Uniformed Services for is own uncertified labora- gistrate Judge Nancy  
if "the Medicaid doctor," cs in central and south-

west Houston, said Assistant U.S. Attor- ney Michelle Zingaro. One has closed.

As a Medicaid provid- er, Mack was required to provide blood tests out- lined by the Texas Health Steps Program and designed to detect childhood illnesses treatable if found early, such as sickle cell ane- mia and lead poisoning.

Texas Attorney Gen- eral John Cornyn, whose office investi- gated the alleged fraud, said Johnson's order is a signal to those who try to steal from Medicaid.

Cornell Williams, Mack's attorney, de-

clined comment except to say, been assured that no criminal p- tion will result from the civil com-

The United States sued Mack i for fraud, conspiracy to defraud a just enrichment.

Government attorneys are seek imbursement for services fraud billed from May 16, 1992-Aug. 4, 19 court records showed that the N Heritage Insurance Co., which at- ters the program, detected probi Mack's billing procedures back to Cornyn's Medicaid Fraud Contr found Mack's income for Medica services increased by almost \$500 a one-year period, 1991-92.

Some of Mack's patients also n Medicaid that they did not receive

Investigators of the Texas AG's Med- icaid Fraud Control Unit joined with counterparts in the U.S. Defense Criminal Investigative Services in reviewing Mack's billing records. The investigation revealed a pattern of billing Medicaid and CHAMPUS for services not rendered. The bulk of the fraudulent billing related to Dr. Mack's failure to perform periodic blood screening tests mandated by the Texas Health Steps Program. These tests screen children for a variety of medical problems that can be treated if detected early, such as lead poisoning and sickle cell anemia.

In a case involving contract fraud, the district worked to ensure that the gov- ernment got what it paid for. North American Pipe Corporation (NAPCO) agreed to settle allegations that the company supplied the government untested polyvinyl chloride pipe. NAPCO, a subsidiary of Westlake Chemical Company, paid \$500,000 to settle claims that the company sold the untested pipe to the Defense Department and the Federal Bureau of Prisons. The company will also provide a 30-year warranty to loan and grant recipients from the Departments of Agriculture and HUD for selling pipe that had not been tested in conformance with applicable industry standards and government contract specs. The case was brought under the whistle blower or *qui tam* provisions of the False Claims Act. Under the *qui tam* provisions of the Act, a private party can file an action on behalf of the United States and receive a portion of any recovery if the party satisfies certain requirements. A former salesman for the pipe company will receive \$100,000 from the cash settle- ment and an additional \$300,000 from NAPCO.

Another case involved a healthcare fraud lawsuit against a dentist, Dr. Lance Jue, who was accused of up-coding x- rays done on children's teeth. Dr. Jue paid \$17,500 to the government in settlement.

## DEBT COLLECTION

The collection of fines, penalties and debts for the United States by the district through litigation and affirmative civil enforcement totaled over \$37 million in 2000. In addition, over \$8 million in assets used in, and gained by criminal activity were ordered forfeited to the United States. The nearly \$45 million realized through these efforts far exceeded the operating cost of the office, and demonstrates the impact of vigorous and effective enforcement of federal law.

**U.S. ATTORNEY - SDTX  
ASSET FORFEITURE FUNDS DEPOSITED  
FY 2000**

**\$12,878,369**

*\*Third largest amount deposited by all  
U.S. Attorney Offices, FY-2000*

**U.S. ATTORNEY - SDTX  
EQUITABLE SHARING DISBURSEMENTS  
FY 2000**

**\$3,504,355**

*\*Third largest amount disbursed by all  
U.S. Attorney Offices, FY-2000*

## ASSET FORFEITURE

The district has long pursued the strategy of recovering assets used or amassed by criminals in the course of their illegal activities. The Asset Forfeiture Division of the district is recognized as having one of the most effective programs in the nation. The district consistently ranks among the most productive of all U.S. Attorney Offices in asset forfeiture. In 2000, the district brought in over \$12.8 million to the national asset forfeiture fund.

An important feature of the asset forfeiture program is the equitable sharing with State and local agencies. Sheriff departments, municipal police, and other state and local law enforcement agencies in the district that assist in investigations can share in the distribution when cases result in federal forfeiture of criminally derived assets.

In 2000, the district disbursed \$3.5 million through the Equitable Sharing Program. This was the third largest amount shared by any district last year.

The two cases summarized here demonstrate how asset forfeiture litigation is an integral part of criminal and affirmative civil enforcement efforts.

In *U.S. v. White*, an embezzler was forced to repay his employer. An office manager of an automobile dealership in Bryan caused fraudulent invoices to be paid to accounts in the names of fictitious companies. Charles White stole approximately \$1.5 million during his ten years of employment. A vehicle, \$35,000 and two properties he purchased with proceeds were seized and forfeited based on White's fraud. The property was liquidated by the U.S. Marshal Service and the proceeds were returned to the victim of the crime. AUSA: Cedric Joubert & Bill Yahner; AGENCY: FBI.

*US v. Hamilton* was a health care fraud prosecution featured in the White Collar Crime section of this report. A civil forfeiture complaint was filed against 3 houses and 4 luxury vehicles, as well as a pension plan. In addition to facing prison sentences, defendants forfeited the financial gains of their crime.

## DEFENSIVE LITIGATION

The district's Civil Division AUSAs represent federal agencies and employees in tort cases brought against them in the discharge of their official responsibilities. In 2000, these attorneys obtained favorable rulings in many *Bivens* cases brought against federal agents, and defended agencies sued for negligence.

*Swate v. Hyath* was a case filed against DEA agents arising out of a news crew riding along on a search of a business. The Fifth Circuit Court of Appeals ruled that the agents are entitled to qualified immunity and thus not liable for monetary damages to the business owner.

Other cases last year involved a death by electrocution at NASA, medical malpractice claims against the VA Hospital, and vehicle accidents. One case effectively defended involved claims brought by a group of farmers against the government claiming racial discrimination in obtaining agricultural loans.

AUSAs David Guerra and Charles Wendlendt, along with Department of Justice attorneys, successfully represented the United States in an appeal of a \$72 million judgment against the government on claims for oil and gas royalties under the Falcon Dam and lake in South Texas along the U.S.-Mexico border. In *Heirs of Guerra v. United States*, the Fifth Circuit Court of Appeal reversed a summary judgment in favor of the heirs. On remand the case was dismissed.

## BANKRUPTCY

Civil Division AUSAs represent the interests of the United States in numerous bankruptcy cases each year. Most of these cases are resolved through settlement. The office manages a wide variety of bankruptcy referrals for federal agencies. While most cases are for the IRS or VA, significant claims were litigated on behalf of HHS, Mineral Management Service and other agencies.

In 2000, a significant case involved Ponder Industries. AUSAs Kurt Didier and Charles Wendlendt of the Corpus Christi office participated in various adversary proceedings and ultimately reached an arrangement for certain obligations to be paid to the U. S. as part of the reorganization plan. In an individual bankruptcy, the government represented by AUSA Judy Robbins recovered \$150,000. *In re DeAnda*.

## DEFENSE OF FEDERAL PROGRAMS AND POLICY

Howard Rose, a Special Assistant U.S. Attorney from INS, represented the United States in gaining clarification of a new immigration law. In *Max-Geroge v. Reno*, the Fifth Circuit Court of Appeals held that all review of issues concerning orders to remove aliens must be by petition for review in the Court of Appeals. This landmark decision made clear that U.S. District Courts do not have habeas corpus jurisdiction to review an order to remove a criminal alien. The removal order is distinct from a deportation order.

Representation of federal agencies in Title VII employment matters involves complex and time-consuming litigation. In *Gamboa v. Henderson*, AUSA Sam Longoria and Main Justice Civil Division attorneys appealed an adverse jury finding in a case against the U.S. Postal Service. The Fifth Circuit Court of Appeal vacated the jury's front and back pay award thus reducing the verdict from about \$900,000 to \$300,000. *Kachur v. Rubin* was a case brought by an IRS employee. In *Cole v. Postal Service*, a postal worker filed suit seeking over \$400,000 in damages for discrimination, breach of contract, and other claims. AUSA Liz Karpati represented the U.S. Postal Service and settled the case at mediation for \$2,000.

Other representative Title VII cases in the district during the past year include *Salinas v. Rubin* (failure-to-promote claim brought by a Customs agent), *Castenada v. Henderson* (wrongful termination case brought by a former U.S. Postal Service employee), *Pina v USPS* (a Postal worker's claim of violations of the Family Medical Leave Act) and *Cornel v. West* (claim by VA Medical Center employees that supervisors were held to a different standard than line employees).

## AMERICA'S ENVIRONMENT & NATURAL RESOURCES

The district defends federal programs and enforces statutes that safeguard America's environment and natural resources.

The district is committed to pursue both civil and criminal cases against those who violate laws that protect public health, the environment, and natural resources. AUSAs who specialize in environmental cases work cooperatively with other components of the Department of Justice and other agencies, including the EPA, States, local law enforcement, and community representatives in developing and bringing civil and criminal enforcement actions.

Last year Assistant U.S. Attorney Gordon Young received the Attorney General's John Marshall Award for his work on the Koch Industries Clean Water Act case. In that case, Koch Industries settled the case for \$30 million in civil penalties and an additional \$5 million in supplemental environmental projects to be funded by Koch. This was the largest penalty imposed on a company under federal environmental laws. The amount was based upon spills of at least 41,000 barrels of oil and other petroleum, resulting in over three hundred violations of the Oil Pollution Act of 1990 in six states. The largest single spill was approximately 100,000 gallons of crude oil which caused a 12-mile oil slick on Nueces Bay and Corpus Christi Bay. Eroded and broken pipelines caused the spills. Six of the spills were into ponds, lakes and rivers.